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No. 95-1861

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DANIEL IMMEDIATO, DIANE IMMEDIATO and EUGENE IMMEDIATO,

Petitioners,

vs.

RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA, FRANK SPEDAFINO, BEATRICE CERASOLI, ALAN MANOCHERIAN, JANICE K. ANDERSON, LIZ PERELSTEIN; and PETER J. MUSTICH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals properly determined that the community service requirement of respondent school district does not infringe upon any parental liberty right cognizable under the Fourteenth Amendment to the United States Constitution.

2. Whether the Court of Appeals properly determined that the community service requirement of respondent school district does not infringe upon any personal liberty right of students cognizable under the Fourteenth Amendment to the United States Constitution.

JURISDICTIONAL STATEMENT

Respondents, RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA, FRANK SPEDAFINO, BEATRICE CERASOLI, ALAN MANOCHERIAN, JANICE K. ANDERSON, LIZ PERELSTEIN, in their official capacities as members of the Rye Neck School District Board of Education; and PETER J. MUSTICH, in his official capacity as Superintendent of Rye Neck School District (hereinafter "respondents" or "the school district") concur with the Jurisdictional Statement set forth in the Petition of DANIEL IMMEDIATO, DIANE and EUGENE IMMEDIATO, (hereinafter "Petitioners").

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STATEMENT OF THE CASE

Educators have recognized a distinct need to have students graduate with "real world" skills, which cannot be acquired sitting in a classroom.[1] Business people have also identified the need to have students acquire such skills before entering

[1] *See, e.g.,* School-to-Work Opportunities Act, 20 U.S.C. § 6650; National and Community Service Act of 1990, 42 U.S.C. §12501 et seq.

the workforce and have consequently instituted their own outreach programs to facilitate the school to work transition.[2]

Based on these concerns and observed educational needs, Respondent Rye Neck School District[3] determined that students could best acquire these "real world" skills through active participation in community work environments. Community service learning is active learning, not "activist" learning, as Petitioners have portrayed it.

In 1990, the Rye Neck School District Board of Education determined that students in grades 9 through 12, commencing with the 1992 graduating class, would be required to complete 40 hours of community service during the four high school years as a requirement for graduation, in connection with a course entitled "Managing Your Future." (A. 46).[4] "Managing Your Future," was developed in relation to a required senior history course on government. (R-6). The course has both a classroom component and an out-of-classroom component (the community service requirement). Completion of both components is necessary to pass the course. (A-56, A-59-60). The course is graded on a pass/fail basis. (A-55).

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[2] *See, e.g., Mentoring in Schools,* Wall Street Journal, May 9, 1995, p. 1 at col. 5.

[3] Respondent school district is a union free school district organized pursuant to New York State Education Law §1701. Its high school, located in Mamaroneck, New York, has a current enrollment of 278 students, grades 9 through 12. (A-46) (References to the Appendix to the Petition are preceded by "A-"; for the sake of clarity, references to the Appendix to Respondents' Opposition to the Petitioner are preceded by "R-."

[4] The community service program was developed by the school district through a review of a New York State Education Department syllabus on "Community Internship/Internship Model," a review of the programs in other school districts and states, a review of the decision of the New York State Commissioner of Education encouraging school districts in New York State to adopt such programs, and a perceived need to have students, particularly seniors, move successfully into the real world.

The community service program, as incorporated into the course "Managing Your Future," serves as a bridge between school and work or school and college and gives students an opportunity to examine potential careers -- a valuable opportunity they could not obtain sitting in a classroom. The program also acquaints students first hand with good citizenship and civic responsibilities. The specific educational goals of the program include having students learn about the community and the needs of the community; having students learn what services are necessary to meet the needs of the community and its citizens; encouraging students to meet a diverse section of the community and see what they do and, if possible, to become involved in internships with various organizations and agencies. (A-50).

Students may perform the community service component in a variety of settings. The school district coordinators of the program provide students with a lengthy list of organizations and agencies from which they may choose. Included on that list are the American Red Cross, the Mamaroneck Community Nursery School, Volunteers in Archives, United Hospital, Westchester Lighthouse for the Blind, New Orchestra of Westchester, the Rye Nature Center and the local food pantry, along with numerous other organizations. (A-57-58).

Students are permitted and indeed encouraged to select other organizations or agencies for which to perform their service. In order for students to earn credit toward completion of the service requirement the proposed service must be preapproved by the school district coordinators of the program. (A-47).

Students may perform the 40 hours of community service at any time during the four high school years including the summers. Twenty hours of the required 40 hours can be provided to younger students (i.e. tutoring) within the school district during the school day. (A-47). Students may not receive pay for their services nor may their services displace activities performed by paid employees in accordance with

the New York State Syllabus on "Community Service/Internship Model." (A-47).

Petitioner Daniel Immediato ("Daniel") was a student at Rye Neck High School and therefore required to complete the out of classroom community service component of the program in order to graduate. Daniel and his parents object, on non-religious grounds, to the school district's mandatory community service program because they believe that the program violates a parental liberty right to direct the upbringing of Daniel. Consequently, Petitioners claim that a high school's choice of curriculum should be subject to strict scrutiny review and consequently that school districts must show that their choice of a particular curriculum is narrowly tailored to serve a compelling state interest.

Application of strict scrutiny to review a high school's choice of curriculum is unprecedented and unwarranted. Respondents agree that there are certain fundamental personal rights which have been revered since the Constitution was written and with which the state may not interfere. No federal court has held, however, that a parent has a fundamental liberty interest to compel a public school district to tailor its curriculum to the parent's individual secular beliefs. On the contrary, this Court has made it clear that the provision and regulation of public education "ranks at the apex of the function of a State."[5] This Court has long recognized that the state has the right to prescribe a reasonable curriculum for its schools and has consistently held that secular objections to curriculum cannot form the basis of a legally cognizable constitutional challenge. The right to raise one's children as one sees fit has never been interpreted to mean that parents may substitute their own idiosyncratic judgment regarding appropriate curriculum for that of the local school board.

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[5] *Wisconsin v. Yoder,* 406 U.S. 205, 213, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15 (1972).

As the school district's students move into the 21st century, they will need skills beyond the three R's to become effective citizens, employees, and leaders. As conceded by Petitioners, the community service program provides students with "real world" experience, problem solving skills and potential career contacts and opportunities which they cannot acquire sitting in a classroom. Petitioners seek to have the Court hear this case even though, as argued below, this Court has never held that there is a parental right to usurp a local board of education in matters of curriculum and there is no conflict among the Circuit Courts of Appeal. Accordingly, the school district urges the Court to affirm the district court in upholding the community service program.

THE PETITION FOR CERTIORARI SHOULD BE DENIED

I. APPLICATION OF STRICT SCRUTINY TO REVIEW THE DECISIONS OF LOCAL SCHOOL BOARDS CONCERNING APPROPRIATE CURRICULUM IS UNPRECEDENTED AND UNWARRANTED.

Today, Petitioners invite the courts to sit as super-school boards to make decisions about appropriate curriculum and to determine whether each course is narrowly tailored to serve a compelling state interest. Contrary to Petitioners' assertions, the application of strict scrutiny review will wrest decisions about curriculum from the hands of educators and place them in the hands of courts -- undoubtedly to the consternation of both. The application of strict scrutiny review to all educational programs of school districts will cripple public school districts by subjecting them to a flood of litigation filed by disgruntled parents. Indeed, no school district will be able to establish minimum academic requirements for graduation without facing the prospect of litigation.

The District Court and the Court of Appeals properly rejected Petitioners' invitation to subject the school district's program to strict scrutiny. In applying a rational basis test, the Second Circuit stated that,

> [p]laintiffs argue for a "constitutional right of parents to have primary responsibility over the upbringing and education of their children," and they contend that such a right is sufficiently basic and traditional to warrant strict scrutiny ..... We appraise this request with humility and caution, as "judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field"
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> ....
>
> ...where, as here, parents seek for secular reasons to exempt their child from an educational requirement and the basis is a claimed right to direct the "upbringing" of their child, rational basis review applies. *Immediato v. Rye Neck School District,* 73 F.3d 454, 461-462 (2d Cir. 1996).

Similarly, this Court and Circuit Courts of Appeal have consistently held that while parents have a right to direct the upbringing of their children, this right does not permit parents to substitute their opinions for that of the local school district in designing an appropriate curriculum. *See, e.g., Runyon v. McCrary,* 427 U.S. 160, 176, 96 S.Ct. 2586, 2597, 49 L.Ed.2d 415 (1976). As this Court cautioned in *Runyon*, the opinions in *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925) and *Meyer v. Nebraska*, 262 U.S. 390, 402 (1922) upon which Petitioners heavily rely should not be read to create a separate constitutional basis upon which parents could bring a fundamental rights challenge against any educational program of which they disapproved. *Runyon,* 427 U.S. at 176-177, 96 S.Ct. at 2597-2598, 49 L.Ed.2d 415. Further this Court stated,

> In Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, the Court stressed the limited scope of Pierce, pointing out that it lent "no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society" but rather

> "held simply that while a State may posit (educational) standards, it may not pre-empt the educational process by requiring children to attend public schools." Id., at 239, 92 S.Ct., at 1545 (White, J., concurring). And in Norwood v. Harrison, 413 U.S. 455, 93 S.Ct. 2804, 37 L.Ed.2d 723, the Court once again stressed the "limited scope of Pierce," Id., at 461, 93 S.Ct., at 2809, which simply "affirmed the right of private schools to exist and operate ...." Id., at 462, 93 S.Ct., at 2809.

Id.

The state is accorded broad discretion in selecting a curriculum for its public schools. *Board of Education, Island Trees U.F.S.D., No. 26 v. Pico,* 457 U.S. 853, 863 (1982); *Meyer*, 262 U.S. at 402. If the school district has a rational purpose for its selection of curriculum, then the courts should not interfere. *Cornwell v. State Bd. of Educ.*, 314 F.Supp. 340 (D. Md. 1969), aff'd 428 F.2d 471 (4th Cir.), cert. denied, 400 U.S. 942 (1970); *see also Yoder*, 406 U.S. at 215, 92 S.Ct. 1526, 32 L.Ed.2d 15. Hence, the state may require that all children receive a minimum education, but cannot require that every child attend a public school. *See Pierce*, 268 U.S. at 534-35; *Stough v. Crenshaw County Bd of Educ.*, 579 F.Supp. 1091, 1093 (M.D. Ala. 1983). Contrary to Petitioners' assertions, no federal court has given parents the broad power Petitioners seek.

The jurisprudential conflict posited by Petitioners is a false one. The decisions of this Court and the Circuit Courts consistently limit the parental right to direct the upbringing of children to permit *reasonable* state regulation of education, particularly in the area of public school curriculum. *See, e.g., Pico,* 457 U.S. at 863; *Runyon,* 427 U.S. at 176-177, 96 S.Ct. at 2597-2598, 49 L.Ed.2d 415; *McCollum v. Board of Educ.*, 333 U.S. 203, 235, 68 S.Ct. 461, 477, 92 L.Ed.2d 649 (1948); *Pierce,* 268 U.S. at 534; *Brown v. Hot, Sexy and Safer Productions, Inc.,* 68 F.3d 525, 533 (1st Cir. 1995) *cert. denied* 116 S.Ct. 1044 (1996) (parents do not have a fundamental

right to dictate public school); *Murphy v. Arkansas,* 852 F.2d 1039, 1041-42 (8th Cir. 1988); *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.,* 899 F.Supp. 1443 (M.D.N.C. 1995) (upholding mandatory community service program on rational basis test); *Mozert v. Hawkins County Board of Educ.*, 827 F.2d 1058, 1066-68 (6th Cir. 1987) *cert. denied* 484 U.S. 1066, 108 S.Ct. 1029 (1988).

Moreover, no decisions accord strict scrutiny review to school curriculum choice based upon a parental liberty interest. *See, e.g., Runyon,* 427 U.S. at 176-177, 96 S.Ct. at 2597-2598, 49 L.Ed.2d 415; *Pierce*, 268 U.S. at 535 (statutes had "*no reasonable relation* to some purpose within the competency of the State."(emphasis added)); *Meyer,* 262 U.S. at 403 ("the statute as applied is arbitrary and *without reasonable relation* to any end within the competency of the state" (emphasis added)); *Blackwelder v. Safnauer,* 689 F.Supp. 106, 135 (S.D.N.Y. 1988) (parents may not replace state educational requirements with their own idiosyncratic view of appropriate curriculum) *cert. denied,* 866 F.2d 548 (2d Cir. 1989).

Petitioners ask this Court to extrapolate from the holdings of *Pierce* and *Meyer* that there is a fundamental parental right to direct a child's education which triggers strict scrutiny review each and every time a parent disagrees with the school district's choice of curriculum. In any event, Petitioners' suggestion that the adoption of a "coercion" threshold will limit the number of cases falling within strict scrutiny review is simply wrong. (Pet. at 21). According to Petitioners' definition, coercion would be found in every instance where the completion of a particular course or program was a graduation requirement.

As a consequence, any high school graduation requirements, no matter how rooted in traditional educational practices, would come under attack. School districts would be effectively prevented from having minimum academic requirements. English literature is a required course in many school districts, therefore, under Petitioners' definition,

coercive, and subject to strict scrutiny. Similarly, the three years of mathematics required by most school districts would be coercive and thus subject to strict scrutiny. Term papers and physical education requirements would be coercive and thus subject to strict scrutiny. Basic computer literacy requirements would also be coercive and thus subject to strict scrutiny. The list is endless. This is not a mere "parade of horribles," this is the untoward consequence of according strict scrutiny review to local school district's choices of curriculum.

Having found that these courses fell within Petitioners' definition of "coercive," the courts would then have to evaluate the educational merits of each course to determine whether they were narrowly tailored to serve a compelling state interest. Not only is there no basis for Petitioners' coercion threshold, more important, there is no basis in Supreme Court jurisprudence for affording fundamental rights status to parental rights in the area of school curriculum.

II. THERE IS NO SPLIT IN JUDICIAL PRECEDENT REGARDING A SCHOOL DISTRICT'S AUTHORITY TO PRESCRIBE A REASONABLE CURRICULUM FOR ITS STUDENTS.

American public schools are charged with the high duty of educating the nation's children and preparing them to be useful citizens. *Pico,* 457 U.S. at 863; *see also Ambach v. Norwick,* 441 U.S. 68, 80 (1979) (state may introduce principles of responsibility and good citizenship).[6] It is well-settled that schools have broad discretion in matters of curriculum and that a local school board's choice of curriculum must not be set aside lightly. *Pico,* 457 U.S. at 863; *Runyon,* 427 U.S.

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[6] Indeed, in their discussion of the old state law cases on which they rely, Petitioners concede that, even at this time of supposedly unfettered parental rights, "students could not be exempted from classes deemed the 'essentials of good citizenship[,]" the very relief sought here. (Petition at 16).

160, 176, 96 S.Ct. 2586, 2597, 49 L.Ed.2d 415. "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint." *Epperson v. Arkansas,* 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968).

Not surprisingly parents may at times disagree with the institution of a particular course or curriculum chosen by the local school board. Parents may address their concerns to the local school board and urge other parents to do likewise. The Courts, however, should be circumspect in permitting such disagreements to merit judicial intervention. As this Court articulated over twenty years ago, "[a] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations." *Yoder,* 406 U.S. at 215, 92 S.Ct. 1526, 32 L.Ed.2d 15.

A parent's right to bring up his or her child in accordance with his or her views has never been held to be coterminous with that parent's *desire* to exercise control over all aspects of a child's education. *See Runyon,* 427 U.S. at 176, 96 S.Ct. at 2597, 49 L.Ed.2d 415; *Pierce*, 268 U.S. at 534; *Murphy*, 852 F.2d at 1041-42; *Mozert*, 827 F.2d at 1066-68.

Both the District Court and the Court of Appeals noted that while parents have primary responsibility for the upbringing of their children, the state may enact reasonable regulations. "[W]hile parents have definite rights over their children's education, 'they have no constitutional right to provide their children with ... education unfettered by reasonable government regulation.' *Runyon,* 427 U.S. at 178 (emphasis added)." *Immediato,* 73 F.3d at 461. Attendant with the state power to regulate is the authority of local school districts to prescribe a reasonable curriculum for its students.

As the District Court noted,

> our nation has enjoyed a long history of encouraging families to take responsibility for the instruction of their own children, while at the same time,

> making school attendance compulsory and *granting control of the curriculum to state and local officials.* (emphasis added) *Immediato,* 873 F.Supp. 846, 849 (S.D.N.Y. 1995).
>
> ....
>
> parents may not use this Court to interpose their own way of life or their own philosophy, however laudable, as a barrier to reasonable state and local regulation of the educational curriculum. *Id.* at 853.

This Court has accorded fundamental right status to a limited range of uniquely personal and familial decisions which include abortion and contraception. *See Planned Parenthood v. Casey,* 112 S.Ct. 2791, 2805 (1992); *Carey v. Population Services Int'l,* 431 U.S. 678, 692-93 (1976). In addition, this Court has continued to recognize parental rights in the area of freedom of religion. *See, e.g., Yoder,* 406 U.S. at 223-26, 92 S.Ct. 1526. It is critical to note, however, that neither the decisions of this Court nor the decisions of other federal courts have ever permitted parental wishes to override a public school's choice of curriculum. *See, e.g., Pico,* 457 U.S. at 863; *Runyon,* 427 U.S. at 176-177, 96 S.Ct. at 2597-2598, 49 L.Ed.2d 415; *McCollum,* 333 U.S. at 235, 68 S.Ct. at 477, 92 L.Ed.2d 649; *Pierce,* 268 U.S. at 534; *Brown,* 68 F.3d at 533; *Herndon,* 899 F.Supp. 1443 (M.D.N.C. 1995) (upholding mandatory community service program on rational basis test); *Murphy,* 852 F.2d at 1041-42; *Mozert,* 827 F.2d at 1066-68.

The cases cited by Petitioners do not alter this result as those cases finding a fundamental parental liberty interest do not involve a public school's choice of curriculum. *Alfonzo v. Fernandez* was decided on the basis that the provision of condoms was a *health service* not an educational program. 606 N.Y.S.2d 259 (1993), *appeal dismissed without op.* 614 N.Y.S.2d 388 (1994). The *Alfonzo* decision cannot therefore be said to support a fundamental parental liberty interest sufficient to strike down a public school's curriculum. *Id.* Similarly, *Jordan by Jordan v. Jackson,* involved the right to have custody over one's children, which is an altogether different

issue from public school curriculum choices. 15 F.3d 333 (4th Cir. 1994). In *Ohio v. Wisner,* the Court struck down state regulations requiring a religious private school to strictly conform to public school curriculum finding that the regulations effectively abolished the distinction between public and private schools. 351 N.E.2d 750 769 (Ohio 1976). The state regulations in *Wisner* went so far as to require the use of certain texts and state certification of private school teachers. *Id.* The instant case is not about whether a private school must institute a community service program, but rather, whether a public school may constitutionally maintain such a program and make it a graduation requirement.

Petitioners ask this Court to reject well-settled precedent and renounce the traditional deference accorded to school districts in matters of curriculum and control of public schools. *See Pico,* 457 U.S. at 863; *Brown,* 68 F.3d at 533. The school district urges this Court to resist the temptation to overexpand parental rights into an area traditionally reserved to the sound discretion of a duly elected school board. In so doing, the school district asks that the Court follow a long line of Supreme Court cases and adhere to the limitations on parental rights which permit a school district to function. *See, e.g., Pico,* 457 U.S. at 863; *Runyon,* 427 U.S. at 176- 177, 96 S.Ct. at 2597-2598, 49 L.Ed.2d 415; *Epperson,* 393 U.S. at 104-05, 89 S.Ct. at 270, 21 L.Ed.2d 228; *McCollum,* 333 U.S. at 235, 68 S.Ct. at 477, 92 L.Ed.2d 649; *Pierce,* 268 U.S. at 534.

Relying on turn-of-the-century state cases, Petitioners suggest that this nation should return to the era of the late nineteenth and early twentieth century when, allegedly, parental rights were at their apex. The cases cited by Petitioners are unpersuasive. Many revolved around religion. *See, e.g., Hardwick v. Board of School Trustees,* 205 P. 49 (Cal.App. 1921) (Religious objection to dancing); *Hobbs v. Germany,* 49 So. 515 (Miss. 1909) (Religious objection to a school mandate that all homework be done between the hours of 7:00 p.m. and 9:00 p.m., where the child's family attended religious services during that time.); *People ex rel. Vollmar v.*

Stanley, 255 P. 610 (Colo. 1927). (Objection to the reading of the King James Bible during school hours). The few others involving secular objections are also readily distinguishable. For instance, in *State v. Ferguson,* for example, a 1914 decision from a Nebraska state court, a 12-year-old girl was permitted to be excused from a domestic science class, attendance at which required her to travel one and a half miles each way over and above her normal travel to and from school which caused her to fall behind in her other classwork. 144 N.W. 1039 (Neb. 1914). Indeed, there are numerous cases *rejecting* parental objections to curriculum.[7]

In addition, the cases cited by Petitioners are simply not reflective of modern public school education or modern state regulation. At the time these cases were decided, child abuse by parents, both physical and mental, remained largely unchecked and child labor laws were virtually unheard of.[8]

In urging this Court to maintain recognized limitations on the right of parents to control public school education, the school district does not seek to curtail any existing parental rights. The school district does contend, however, that the

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[7] *See, e.g., Cross v. Trustee Walton Graded Sch.,* 110 S.W. 346 (1908) (court held student's suspension for refusal, supported by parents, to participate in school play was proper and within school's authority to prescribe and enforce rules for control and management of the school); *State ex rel. Andrew v. Webber,* 8 N.E. 708 (1886) (court upheld expulsion of students who, at direction of father, refused to participate in a required music course); *Kidder v. Chellis,* 59 N.H. 473 (1879) (rejecting parents' and students' claim that they had a right to exclude student from "declaiming" in school and upholding student's expulsion); *State v. Mizner,* 50 Iowa 145 (1878) (court held that teacher was authorized to expel student who, pursuant to parents' direction, refused to study algebra); *Sewell v. Board of Educ. v. Defiance Union Sch.,* 29 Ohio 89 (1876) (court upheld student's suspension due to failure to participate in rhetoric class); *Ferriter v. Tyler,* 48 Vt. 444 (1876) (school board's power to determine curriculum and compel attendance overrides parent's power to determine what subjects children will study.)

[8] Subsequently, see Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), c. 676 s. 3 52 stat. 1060 (June 25, 1938).

Court should be loath to overexpand the rights of parents by permitting them to substitute their own judgment for that of the local board of education in matters of curriculum. To do so would completely undermine the state's strong interest in educating its citizens.

A. An Opt Out Requirement Coupled with Strict Scrutiny Review of Public School Programs Will Require School Districts to Provide an "À La Carte" Curriculum Which Will Undermine Rather than Promote the States' Legitimate Interests in Education.

As discussed above, Petitioners argue that the this Court should hear this case so that it may clarify a parent's fundamental right to control "coercive" elements of a public school curriculum. According to Petitioners, that portion of a curriculum that involves more than just "exposure" and entails some form of "action" on a student's part, particularly where the "action" takes place outside of school, is inherently coercive such that it is presumptively subject to a parental veto or opt-out. Petitioners' "exposure/action" rule has no foundation in law and is otherwise illogical.

In the first instance, "exposure" itself, which arises out of compulsory attendance, is inherently "coercive" and nonetheless plainly constitutional. *Epperson*, 393 U.S. at 104-05, 89 S.Ct. at 270, 21 L.Ed.2d 228. More important, every course in a public school which requires homework by definition coerces action outside of school and therefore would be subject to strict scrutiny under Petitioners' proposed standard.

Indeed, under Petitioners' reasoning, every science course which entails laboratory experiments goes beyond mere exposure and would therefore automatically infringe upon a parent's fundamental liberty interest. Similarly under Petitioners' proposed standard, while a public school may expose a student to art, physical education and history, it may not require that a student draw, paint, actually participate in a gym class or prepare a history paper from sources available at a public

library. Thus, under Petitioners' "exposure/action" model, any course which involves more than passive listening to a teacher (although listening and taking notes are in themselves "action"), would be subject to a parental veto. Accordingly, the exposure/action distinction in the educational setting was properly rejected by the Second Circuit as being a distinction without a meaningful difference and does not warrant review of this case by this Court.[9]

Petitioners also seek strict scrutiny for any course which teaches values to a student which that student's parents want to instill in the student themselves.[10] Indeed, the thrust of this litigation is not that the Petitioners disagree with the educational purpose of the community service program, but rather that the parents want to teach good citizenship to their child themselves. Thus, under Petitioners' reasoning, if a parent wishes to instill in his/her child an appreciation for art, music, literature or sportsmanship and believes that appreciation

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[9] Petitioners' reliance on *Curtis v. School Committee of Falmouth*, 420 Mass. 749, 652 N.E.2d 580 (1995) *cert. denied.* 116 S.Ct. 753 (1996) is unavailing. In *Curtis*, the parent-plaintiffs were not challenging a mandatory course requirement for graduation, but rather were challenging a public school district's decision to make birth control devices readily available to students. As discussed above, the fundamental liberty interest which attaches to personal choices over birth control does not logically give rise to a similar liberty interest in the area core curriculum and educational requirements. In any event, Petitioners are asking this Court to hear this case based upon a case which rejected a parental challenge under facts which are far more compelling than those herein.

[10] In contrast with the case at bar, cases finding that the government unconstitutionally required a person to perform an act are based upon the Free Exercise Clause. *See, e.g., Thomas v. Review Board,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981) (Jehovah's witness who refused to work on military tanks); *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (sabbatarian who refused to work on Saturdays); *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed.2d 1628 (1943) (Jehovah's witness who refused to salute flag and pledge allegiance); *Spence v. Bailey,* 465 U.S. 797 (6th Cir. 1972) (public education conditioned on ROTC military training contrary to religious beliefs).

should not come about through forced study or participation from a school district, that parent has a fundamental right to opt-out of any course involving those subjects.

Petitioners thus ask this Court to turn mandatory educational requirements at the high school level into a pick and choose curriculum with no enforceable minimum requirements. The relief which the Petitioners seek would unquestionably leave public school's at the mercy of each and every parent in the District who either disagrees with the school's required courses or agrees with the educational purpose of those courses but nonetheless wants to opt-out so that he or she may in essence self-teach that course. The chaos that would result under Petitioners' system of education has been recognized and wisely rejected by this Court: "If we are to eliminate everything that is objectionable to any [parent] or inconsistent with [that parent's personal beliefs], *we will leave public schools in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant suits*." *McCollum*, 333 U.S. at 235, 68 S.Ct. at 477, 92 L.Ed.2d 649 (Jackson, J. concurring) (emphasis added); *see also Brown*, 68 F.3d at 533 (parents do not have a "fundamental right to dictate the curriculum at the public schools to which they have chosen to send their children ... If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum to each student whose parent had genuine moral disagreements with the school's choice of subject matter. We cannot see that the constitution imposes such a burden on state educational systems...").

In short, the relief which Petitioners seek is unprecedented, unwarranted, unworkable and has been uniformly rejected by all courts which have had occasion to address the issue.

The community service requirement, which has already been approved by the New York State Commissioner of Education,[11] is reasonably based upon a well-founded educational

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[11] *Appeal of Anne O'Neill*, 29 Ed.Dept.Rep. 297 (1990).

goal. Following a review of other districts programs, New York State Department of Education syllabi, and the Commissioner of Education's opinion, the school district and the Board of Education determined that "Managing Your Future" was a valuable educational course. The Court may share Petitioners' distaste for performing the community service component of the school district's course, however, the Court must defer to the sound discretion of the local school board in matters of curriculum where the prescribed course or materials are rationally related to an educational purpose.

III. THE COMMUNITY SERVICE PROGRAM DOES NOT UNCONSTITUTIONALLY INFRINGE ANY PERSONAL LIBERTY INTEREST OF STUDENTS

The community service program presents no unconstitutional infringement of any fundamental personal liberty interest of students. Compulsory education has long been held to be constitutional. *Epperson,* 393 U.S. at 104; *Pierce*, 268 U.S. at 534-35; *Concerned Citizens for Neighborhood Schools v. Board of Educ. of Chattanooga,* 379 F.Supp. 1233 (E.D.Tenn. 1974). The limitation, if any, on Daniel's personal liberty is minimal compared with the limitation imposed on Daniel's liberty by school attendance itself. This Court held in *Meyer* that,

> Without a doubt, [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness of free men. *See Meyer*, 262 U.S. at 399 (1922).

Nowhere does *Meyer* intimate that liberty includes freedom from reasonable homework or out of classroom assignments. Students are only required to perform 40 hours of community

service over the course of four years. Even if a student chooses to do all of the community service in one year, the time required amounts only to approximately 90 minutes per week, which is hardly an unreasonably burdensome requirement. Moreover, the New York State Commissioner of Education determined that community service programs served a valuable educational purpose. In *O'Neill,* the Commissioner held,

> I also find that respondent's policy is reasonable in that it will benefit students in their postgraduation endeavors (*See, Matter of Yanson,* 22 Ed.Dept.Rep. 319, 321, *supra*). Community service offers an enriching educational opportunity, both in terms of the values it can engender and the experience it provides. I encourage respondent, and other school districts in this State, to pursue this laudable practice. 29 Ed.Dept.Rep. at 299.

Far more substantial limitations on student liberty interests have been held constitutional by this Court. *Ingraham v. Wright*, 430 U.S. 651, 668-69 (1977). In *Ingraham*, this Court upheld the infliction of corporal punishment in disciplining school children. 430 U.S. at 668-69. The Court noted,

> [w]e have repeatedly rejected 'the notion that *any* grievous loss visited upon a person by the State is sufficient to invoke the Due Process Clause' .... we must look not to the 'weight,' but to the *nature* of the interest at stake. [citations omitted] Id. at 672. (emphasis added).

The extent of the infringement, if any, must be balanced with the importance of the liberty interest sought to be protected. Although the state must demonstrate a compelling state interest to justify interference with very strong liberty interests such as the right to the free exercise of religion and the right to abortion, *see Casey*, 112 S.Ct. at 2805; *Yoder*, 406 U.S. at 223-26, the personal liberty interests claimed by Petitioners have never been recognized by any court as requiring a student to be excused from reasonable educational requirements

of a public high school. *See, e.g., Pierce,* 268 U.S. at 534; *Brown,* 68 F.3d at 534; *Null v. Board of Educ.*, 815 F.Supp 937 (S.D.W.Va. 1993). As a result, the school district's mandatory community service requirement is subject only to a reasonableness test. *See San Antonio School District v. Rodriguez*, 411 U.S. 1, 35 (1972); *Blackwelder*, 689 F.Supp. at 136 (N.D.N.Y. 1988), *cert. denied,* 866 F.2d 548 (2d Cir. 1989). Nevertheless, Petitioners ask this Court to reject settled precedent and to create a blanket liberty interest shielding students from any activities with which students or their parents disagree on secular grounds. Petitioners' arguments are not supported by federal precedent and are not worthy of review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: June 15, 1996

APPENDIX

What Did You Gain From Your Community Service?

1994

Community Service Responses 1994

I learned that you can make a difference in other peoples' lives by helping out. I learned about responsibility and felt good about myself. * * *

Learning to give back to the community. Learning to work as a team(cooperation) to get bigger things done faster. The realization that I am lucky to be living in this community and there are many people worse off than me. * * *

I gained a great sense of pride in getting the job done and helping to keep the environment a little cleaner. I also found out that I was capable of leading a group of people through a task of my own design. * * *

Responsibility and experience * * *

I gained a lot from this. I learned to be more responsible. I would be responsible to watch the children and to make sure they don't get hurt. I would be responsible to make sure that they go home with their parents. * * *

Humanitarian effect and gratitude for my health and personnal [sic] skills. * * *

I learned what the hospital environment is like and if I'd like to be in it as a career, and I've been around sick people, and would like to help them. I Interned with nurse and I see what things they do, like observing the patient, giving medication, doing I.V.'s, and other varied things. I realized that this is one of my goals in life-to be a successful nurse. * * *

I could say I got satisfaction because when I helped the elderly that got very happy. * * *

I have learned that people who are homeless are not always crazy or dirty as they are typically portrayed in the media. I

have learned that by helping others you can better yourself. * * *

I gained pride in my church to a greater extent and felt good for doing a favor for someone without being paid. Those are my honest feelings. * * *

It feels good to help people who need help. * * *

Respecting people, how a hospital is run, taking a major responsibility for other people. Learning risks, keep alert, and a good feeling about myself. * * *

From this experience I gained some knowledge on the the computor, but most of all I learned how to deal with children a lot better. I learned how to handle them, control them and make them want to learn. * * *

It is hard to say exactly what I learned. I am overwhelmed with happiness at the sight they get watching us sing. They all love us and have to be around young people. I love to sing and would sing for anyone any time. Its for me too, I feel very bad for them and I am glad to have "made their day". * * *

I gained the knowledge that working with people is a factor that I like about any job. Ushering gave me a sense of what ist is to serve people, and singing for an audience, a sense of performance in the art world. The hospital experience will also help me decide which science profession to pursue. * * *

Knowledge on how to keep a shop from going out of business, for example, it has to have regular opening hours, and good reliable works that do not give away the profits. * * *

An advanced outlook on my community and the technical skills which are available to me. How to work with people better, care for them, teach them.

I gained from this service how firemen work so hard and the good and bad of the job. * * *

I gained self-advocating skills and I gained a lot from the complaints. * * *

I gained an appreciation of how hard the athletes had to work. They had to work twice as hard as any other non-handicapped athlete. * * *

I have gained much from this experience in all fields as well as social structure in the area of asking for what is needed in life and as well as a job in the world of work. * * *

From this I gained more respect for elderly and I now realize how its not going to be easy for anyone in the future. With good health, everyone grows old. And the person who I met, and went back to meet two times after I originally met her, was in great health for 86 and I wish to be so healthy and happy in my elder years. * * *

This service made me feel happy because I know I was helping someone to understand how to do their work better. They were grateful for this and it made me feel good. * * *

I learned a lot about about many different types of animals. I learned how to take care of over 40 different animals, and their habits. I learned how to better relate with people and calm people who were frightened by certain animals. I enjoyed what I did. * * *

I learned that it is important to recycle because it is important and it saves a lot of time. I love helping the environment. * * *

I learned there are many capable individuals and all they need is a little help to succeed. It is a great feeling to help someone and see the "hands on" or actual results. * * *

I gained responsibility and a good feeling inside. I felt I gave back to the community. * * *

I gained a lesson from helping elderly people in there [sic] needs. * * *

I learned about lighting technique. People lighting, for certain scenes, and how to back up lights without starting fires or causing accidents. * * *

That It can be fun working with children.And know how they behave. * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANIEL IMMEDIATO, a minor, by DIANE and EUGENE IMMEDIATO, as Guardians, and in their own right, and MARIO GIRONDA, JR., a minor, by MARIO and SANDRA GIRONDA, as Guardians, and in their own right,

Plaintiffs,

- against -

RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA, FRANK SPEDAFINO, BEATRICE CERASOLI, ALAN MANOCHERIAN, JANICE K. ANDERSON, LIZ PERELSTEIN, in their official capacities as members of the Rye Neck School District Board of Education; and PETER J. MUSTICH, in his official capacity as Superintendent of Rye Neck School District,

Defendants.

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DEFENDANTS' RESPONSE TO PLAINTIFFS' INTERROGATORIES

94 Civ. 2831 (CLB)

Defendants, by their attorneys, Plunkett & Jaffe, P.C., hereby respond to the interrogatories of Plaintiffs. Defendants reserve the right to amend these interrogatory answers should new facts or evidence become apparent.

Defendants object to plaintiffs' interrogatories to the extent that they are in violation of Rule 46 of the Civil Rules of the

United States District Courts for the Southern and Eastern Districts of New York as said rule applies to the Southern District and reserve their rights pursuant to said rule.

INTERROGATORY 1

1. (a) State in detail the educational interests or purposes of the mandatory community service program when it was first introduced into the curriculum and any subsequent modification or amendment of those interests or purposes.

(b) Identify all documents on which Defendants relied in formulating, modifying or amending the educational interests or purposes of the mandatory community service program.

(c) Recount the sequence of board meetings, if any, in which those interests or purposes were discussed, including the date, time, length, attendance, and speakers at the meeting and any votes taken.

RESPONSE:

1.(a) The community service program was developed in relation to the required senior history course on government. Its purpose was to have students learn about the community and the needs of the community, to learn what services are necessary to meet the needs of the community and its citizens, to meet people and see what they do and, if possible, to become involved in internships with government officials and agencies. In addition, students were urged to do research and turn in reports on the field in which they volunteered; for example, to do a report on alternatives for the care of the aged. When the community service program was incorporated into a course entitled "Managing Your Future" the community service was also intended as a bridge between school and work or school and college. Students had to learn to make a commitment, to arrive as promised, to dress appropriately and to work with other people as well as being given an opportunity to look at possible careers. The other educational aspects of "Managing Your Future" are on a document entitled "Managing Your Future Curriculum," one of the documents

produced in response to Plaintiffs' First Set of Requests for Production of Documents.

(b) See documents provided in response to Plaintiffs' First Set of Requests for Production of Documents.

(c) Board minutes do not normally record discussions nor the time and length of such discussions, nor the particular speakers. Reports of the Superintendent of Schools are normally recorded as at the Board of Education meeting of February 28, 1990 (document provided in response to Plaintiffs' First Set of Requests for Production of Documents).

INTERROGATORY 2

To the extent the interests or purposes were not officially developed at school board meetings, describe in detail when, how, and by whom they were developed.

RESPONSE:

2. The community service program and the course "Managing Your Future" were developed by review of a New York State Education Department syllabus on Community Service/Internship Model, a review of the programs in other school districts and states, a review of a decision of the New York State Commissioner of Education encouraging school districts in New York State to adopt such programs, and a perceived need to have students, particularly seniors, move into the outside world. The program was developed by then High School Principal Howard Storm, history teacher Peter Sgroi, guidance counselor Adrienne Dammacco, and present High School Principal Dr. Barbara Ferraro.

INTERROGATORY 3

3. State whether, and describe in detail how, the mandatory community service program is necessary to fulfill the educational interests or purposes stated in response to Interrogatory No. 1(a).

RESPONSE:

3. Through the contribution of their time and skills, the students become aware of the varied social, educational, and economic needs of both their community and school. Participation in the service program enhances the students' awareness of these needs, how needs can be met, and the opportunity to give a "hands-on" response to what they encounter. In giving a helping hand, the students move from the theoretical position of awareness of a problem and into the real possibility of doing something about it. The normal classroom procedure does not always allow this possibility. Community service helps provide the student with a chance to enhance their own self-esteem, contact with a distinct career possibility, activities for their college applications and a training ground for job opportunity.

INTERROGATORY 4

Describe in detail how the mandatory community service program -- particularly its requirements that the work students perform be unpaid and involve providing service to community organizations -- is a "vital ingredient" of a course intended as a school-to-work or school-to-college transition.

RESPONSE:

4. In order for students to learn about the community they must go out into the community. The organizations to which students provide services are a major component of any community as are government offices and agencies. The program was not intended to take jobs away from others nor was the school prepared to demand of its students that they obtain paying jobs.

INTERROGATORY 5

5. Identify any school districts, outside experts, or specialists consulted by Defendants in drafting, modifying, or amending the mandatory community service program.

RESPONSE:

5. See the documents produced in response to Plaintiffs' First Set of Requests for Production of Documents, numbers 1, 2 and 3.

INTERROGATORY 6

6. Describe in detail any procedures, tests, informal reviews, or other means of evaluation used to measure and analyze what students allegedly gain or learn from the mandatory community service program and the results of such evaluation.

RESPONSE:

6. Students are required to report on what they have done during their community service and in some cases to prepare reports after research. Speakers from various agencies are from time to time brought in to discuss further the policy implications of the work of their agencies. See document entitled "What Did You Gain From Your Community Service?" in response to Plaintiffs' First Set of Requests for Production of Documents.

INTERROGATORY 7

7. Describe in detail any procedures, tests, informal reviews, or other means of evaluation used to measure and assess the success or failure of the mandatory community service program in fulfilling the educational interests or purposes of the program stated in response to Interrogatory No. 1(a).

RESPONSE:

7. See response to 6 above. In addition, the ability of the students to complete the material required for "Managing Your Future" reflects what they have learned during their community service.

INTERROGATORY 8

8. Describe in detail the eligibility criteria of nonprofit or charitable organizations in which students wish to perform service for credit under the mandatory community service program, including how and by whom these criteria were developed.

RESPONSE:

8. The not-for-profit or charitable organizations in which students perform service are standard agencies, recognized in the community, or government officials or agencies, including the Rye Neck School District.

INTERROGATORY 9

9. (a) State whether students have been denied credit or approval for any community service activities they have performed or proposed.

(b) If so, for each denial, identify the type of service activity and the name of the organization for which the student was denied credit, the basis for denial, and the person(s) who denied credit for the service.

RESPONSE:

9.(a) Students would only be denied credit if their activity has not been pre-approved which may occur if the agency or organization does not meet the criterion of not-for-profit or charitable.

(b) See responses to interrogatories 10 and 12 below.

INTERROGATORY 10

10. (a) State whether any student has inquired about service activities for credit and been informed that certain types of service or certain organizations were ineligible for credit under the mandatory community service program.

(b) If so, for each such incident, identify the type of service activity and the name of the organization ineligible for credit,

the basis for the ineligibility, and the person(s) who made the decision.

RESPONSE:

10.(a) and (b) The only two occasions in which students have been told that their proposed service was ineligible for credit in the memory of school staff are (1) a student who wished to work in his father's store and (2) a student who was to be paid for babysitting. In addition, see response to interrogatory 12 below. Adrienne Dammacco is the staff member who pre-approves community service.

INTERROGATORY 11

11. Describe in detail the mandatory community service program's requirement stated in paragraph 9 of the Answer that student service activities may not replace work for which payment is made, including explanation of how, why, and by whom this requirement was developed.

RESPONSE:

11. The requirement that student service activities may not replace work for which payment is made is set forth in the syllabus of the New York State Education Department.

INTERROGATORY 12

12. (a) Describe in detail the standards and procedures that govern whether service performed for religiously-affiliated institutions or organizations is eligible for credit under the mandatory community service program.

(b) If any religiously-affiliated activities have been accepted or rejected under the mandatory community service program, identify the institution, organization, and type of service activity accepted or rejected.

RESPONSE:

12.(a) Service performed for religiously-affiliated institutions or organizations is approved when the activity involves,

for example, clothing drives and food drives including students making sandwiches for the midnight run to New York City to provide food to homeless persons. Service such as proselytizing on the street or door to door in favor of a particular religion would not be approved.

(b) A student who was a member of Jehovah's Witnesses asked to receive credit for proselytizing, which was denied. He later received credit for participating in the midnight run to New York City.

INTERROGATORY 13

13. (a) Identify all organizations and agencies that have requested service of students as stated in paragraph 9 of the Answer.

(b) If any organizations or agencies that have requested service of students have been denied such service, identify those organizations or agencies and state in detail the basis for denial of student service to those groups.

RESPONSE:

13.(a) Organizations and agencies that have requested service include the United Hospital of Port Chester, the Village of Mamaroneck, the Sara Newman Nursing Home, the Greenburgh Nature Center and the Multiple Sclerosis Society. In addition, see documents produced under Plaintiffs' First Set of Requests for Production of Documents.

(b) No organizations or agencies that have requested service of students have been denied such service in the memory of staff members.

INTERROGATORY 14

14. (a) State whether suggestions are made to students about what service activities are available or appropriate under the mandatory community service program.

(b) If so, identify the person(s) who make these suggestions, the process for deciding which service activities will be

suggested to students, and how these service opportunities are made known to the students.

RESPONSE:

14.(a) Service activities that are sought are listed on bulletin boards and read to senior homerooms. See documents produced pursuant to Plaintiffs' First Set of Requests for Production of Documents.

(b) The staff member responsible for informing students of available opportunities for service is Adrienne Dammacco. All activities of standard organizations in the community, all requests, for example, for tutoring services, are eligible and are suggested to students and made known to them, as indicated above, through the use of bulletin boards and information provided in homerooms.

INTERROGATORY 15

15. Describe in detail how students must verify to the school the service hours they perform in order to receive credit toward completion of the requirements of the mandatory community service program.

RESPONSE:

15. Students must fill out a form indicating the service they have performed, where, the name and telephone number of their supervisor at the agency or organization. All such reports are checked with the agency's supervisor by Adrienne Dammacco.

INTERROGATORY 16

16. State the number of service hours that must be performed by students in service other than to the school system stated in paragraphs 1 and 8 of the Answer.

RESPONSE:

16. Students must perform 20 hours of service other than to the school system although, in a special case, an exception may be made.

INTERROGATORY 17

17. Describe in detail the procedures to guarantee the confidentiality of the service performed by students under the mandatory community service program.

RESPONSE:

17. Students report on the service they have performed. However, students are not asked why they selected a particular service, whether they had a particular motivation for picking that service or whether they are in agreement or disagreement with the aims of the organization. They are only asked what service they performed and what they learned from it.

INTERROGATORY 18

18. Describe in detail the format, objectives, and requirements of the course, "Managing Your Future," including the manner in which student service activities are discussed by the students and teacher in the class and incorporated into the coursework.

RESPONSE:

18. In regard to the format, objectives and requirements of the course, "Managing Your Future," see the documents produced headed "Managing Your Future Curriculum" and the forms attached in response to Plaintiffs' First Set of Requests for Production of Documents. Student service activities may be discussed by the students and, as indicated, speakers from the various agencies may come to class to discuss further the work of the agencies.

INTERROGATORY 19

19. Identify all Rye Neck School District personnel responsible for administering the mandatory community service program and their specific duties.

RESPONSE:

19. Peter Sgroi teaches the course "Managing Your Future." Adrienne Dammacco is responsible for supervising the service activities and for contact with agencies and parents. Dr. Barbara Ferraro, High School Principal, has responsibility for overall supervision of high school programs.

INTERROGATORY 20

20. Identify all persons that currently are members of the Rye Neck School District Board of Education, and identify all persons that were board members at the time that the mandatory community service program was adopted.

RESPONSE:

20. Present members of the Board of Education of the Rye Neck School District are Kathleen Gulotta, Alan Manocherian, Janice Anderson, Liz Perelstein, Leonard Tallevi, Robert Frankel. Board members at the time the community service program was adopted were Beatrice Cerasoli, Miles Federman, Kathleen Gulotta, Robert Reich, Francis Spedafino, Stewart Sterk.

Dated: White Plains, New York
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/s/ Phyllis S. Jaffe

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